THE HON'BLE SRI BILAL NAZKI, THE ACTING CHIEF JUSTICE

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

AND

THE HON'BLE DR JUSTICE G.YETHIRAJULU

-

WRIT PETITION No. 5190 OF 2003

% 10-06-2005

Between:

S.Murali Krishna & Others.

..... PETITIONERS

AND

The Government of India, rep. by its Secretary, Ministry of Law, Justice and Company Affairs & others.

.....RESPONDENTS

For the Petitioners : SMT.SUMALINI REDDY

For the Respondents : ADVOCATE GENERAL

< Gist:

> Head Note:

? CITATIONS:

1. (2005) 1 SCC 394

C/15

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF JUNE TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI BILAL NAZKI, THE ACTING CHIEF JUSTICE

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

And

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO : 5190 of 2003

Between:

1 S.Murali Krishna S/o S.Rama Murthy C/o A.P.State Royal Association for Blind People, D.No.6/706, Madras Road.,Sankarapuram, Kadapa District.
2 P.V.Nagendra Babu s/o P.Venkata Ramana
C/o A.P.State Royal Association for Blind People, D.No.6/706,
Madras Road.,Sankarapuram, Kadapa District.
3 D.Amarnath Reddy s/o D.Chandrashekar Reddy
C/o A.P.State Royal Association for Blind People, D.No.6/706,
Madras Road.,Sankarapuram, Kadapa District.
4 G.Sivasankar s/o G.Veeraiah
C/o A.P.State Royal Association for Blind People, D.No.6/706,
Madras Road.,Sankarapuram, Kadapa District.
5 Podla Venkata Ramana s/o Chinna Varadaiah
C/o A.P.State Royal Association for Blind People, D.No.6/706,
Madras Road.,Sankarapuram, Kadapa District.

6 Patti Nageswaramma D/o.P.Nagi Reddy, age: 21 years, Occ: Unemployed, R/o.Saraipalli village, Mydikuru Post and Mandal, Kadapa District.

(Petitioner No.6 is impleaded as per Court order dt.10.6.2005 in WPMP No.2132 of 2004) **..... PETITIONERS**

AND

1. The Prl.Secretary to Government., Education Department.,Secretariat., Hyderabad.

2. The Commissioner and Director of School Education., Hyderabad.

3. The District Educational Officer, Cuddapah District.

4. The Government of India, Ministry of Law, Justice and Company Affairs, rep. by the Secretary to the Government of India, New Delhi.
.....RESPONDENTS

(Respondent No.4 is impleaded as per Court Order dt.10.6.2005 in WPMP No.2131 of 2005)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus directing the Ist and 2nd respondents herein to affect legislation to section 33 of the persons with Disabilities (Equal), opportunities protection of Rights and full participation Act 1995 and to Rule 22(2) of A.P.State and Subordinate service rules by giving affect to his lordship Mr.Justice P.A.Chowdarys judgment in the case of "M.Rajender Reddy Vs. Osmania University" as reported in ALT 1991(11) at page 179 that the Higher Degree of Disability for the physically handicapped person has to be taken as Criteria and not the marks secured for the purpose of services.

Counsel for the Petitioners : SMT.SUMALINI REDDY

Counsel for the Respondents : ADVOCATE GENERAL

The Court made the following :

THE HON'BLE SRI BILAL NAZKI, THE ACTING CHIEF JUSTICE

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

AND

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION No. 5190 of 2003

ORDER : (Per Hon'ble Sri Bilal Nazki, ACJ)

This case was referred to the Full Bench by a Division Bench. The order of the Division Bench is reproduced hereunder, in order to

understand what is the controversy;

"The Writ petitioners are 100% visually handicapped persons. They are also members of A.P. State Royal Association for Blind people which is a registered body at Cuddapah. They appeared for SGT (Telugu) posts from Cuddapah zone in DSC, 2000. They were not called for counseling. They filed O.A.Nos.6849 & 7376 of 2000 before the A.P. Administrative Tribunal, thereafter they filed two Writ petitions. Pending these Writ petitions they appeared for DSC, 2001 and 2002. In DSC 2002 the respondents reserved 7 posts of SGT (Telugu), Cuddapah zone, 3 for men and 4 for women visually handicapped. The petitioners contended that, in fact there were 4 posts reserved for women but there was only one woman eligible.

The Government of India by its memo dated 14-11-77 reserved the posts for physically handicapped persons in the following ratio:

(a) Visually handicapped (blind) -- 1%

(b) Hearing impaired (deaf/dumb) -- 1%

(c) Orthopaedically handicapped -- 1%

According to the petitioners, the Government of India had fixed this ratio of 1:1:1 for each category. The State Government did not implement these directives for a long time, but after 14 years of the Government of India issuing the directives, the State Government issued G.O.Ms.No.115, dated 30th July, 1991 reserving the posts in the ratio of 1:1:1 and it directed all the Heads of the Departments to strictly implement the reservation in the ratio so fixed. The Heads of the Departments were also directed to carryout necessary amendments in the respective Special or Adhoc rules.

The case of the petitioners was that the State Government was not giving effect to reservation of 1:1:1 and the rules framed by the State Government were repugnant to Section 32 of "The persons

with Disabilities (Equal opportunities, Protection of Rights and full participation) Act, 1995 (hereinafter referred as "the Act"). The Tribunal while dismissing the O.As.6849/2000 & batch held;

a. There is no repugnancy between the provisions of statutory Rules under Rule 22(2) of the Andhra Pradesh State and Subordinate Service Rules and the provisions of the said Act 1 of 1996.

b. G.O. Ms. No.385 General Administrative Department dt.18-11-2000 providing for reservation of 1:1:1% each for the said 3 categories is prospective in nature applicable for DSC 2001 and cannot be applicable for DSC 2000.

c. That applicants herein ought to have impleaded the handicapped persons who were selected as necessary parties.

The petitioners filed W.P. Nos.3997 and 4041 of 2002 against the order of the Tribunal dated 1-8-2001 passed in O.A. Nos.6848/2000 & batch. In the meantime, petitioners 1, 3 and 4 got jobs of Attenders at different places and they contend that they are trained teachers and the job of attender demands more physical activity which they are uncapable of doing but because of their financial constraints they have taken up the jobs of attenders. The petitioners 2 and 5 are unemployed. The Writ petitions filed by the petitioners being W.P. Nos.3997 and 4041 of 2002 have been disposed of by a Division Bench of this Court. In these Writ petitions it was specifically pleaded by the petitioners for implementation of Justice P.A. Chowdary's judgment to give effect to higher degree of disability as criteria as against marks secured. It is contended that the learned counsel for the petitioners and the learned Advocate General argued regarding implementation of Mr. Justice Chowdary's judgment, however the Division bench consisting of Justice B. Sudershan Reddy and Justice Ghulam Mohammed did not refer to this specific contention in the

judgment. Their lordships neither upheld the judgment of Justice P.A. Chowdary nor reversed the said judgment. In fact the judgment of Justice Chowdary rendered in 1991 was prior to UNESCAP Proclamation at Beijing in 1992 and also prior to Act 1 of 1996. The relief claimed in the present Writ Petition is;

> "To issue a Writ of mandamus directing the
> 1st and 2nd respondents herein to affect legislation to Section 33 of The Persons with Disabilities (Equal opportunities, Protection of Rights and Full participation) Act 1995 and to Rule 22(2) of Andhra Pradesh State and Subordinate Service Rules by giving affect to His Lordship Mr. Justice P.A. Chodary's judgment in the case of "M. Rajender Reddy vs. Osmania University" as reported in ALT 1991 (11) at page 179 that the Higher Degree of Disability for the Physically handicapped person has to be taken as criteria and not the Marks secured for the purpose of services."

Since this contention has been raised before the Division Bench earlier and according to the petitioners this matter was argued but the Court did not decide it, we would have dismissed the case on the ground that the Division Bench had gone into the question, although it had not decided the question, but for the fact that when the Division Bench had heard the matter the matter was in between the same parties pertaining to different year of selection. The Division Bench was concerned with DSC 2000 whereas the present case has been filed with regard to DSC 2002. In our view there is important question which has to be answered, that is, *"Whether the seats/posts reserved for disabled persons should be given to them on the basis of their academic merit or on the basis of their relative disability."* For example, if a person is 100% blind if he is asked to compete in academics with a person who is 75% blind he would have the same difficulty which he has while competing with a person with no disability. Therefore, it may be always difficult for the person who has more disability to secure a job as against a person who has disability of a lower grade and the purpose of reservation in favour of disabled persons would be

rendered useless. We have seen the judgment of Justice P.A. Chowdary reported in *M. Rajender Reddy v. Osmania University (1991(11) ALT 179)* in which His lordship held that the higher grade disability should be the criteria and not the merit of the persons who have disability. We are prima facie of the view that although merit cannot be sacrificed but at the same time the disability has to be the deciding factor in offering jobs or seats to the disabled. Broadly we agree with the views of Justice P.A. Chowdary, but we would place it on record that there can be a mechanism by which there is a minimum benchmark fixed and all those persons who are able to get that benchmark they could be considered on the basis of degree of their disability. Suppose, in the appointment of teachers, in the examination which is conducted, if some percentage is fixed as a qualifying benchmark and all those who secure that benchmark could then be considered not on the basis of their marks in the examination but on the basis of degree of their disability. Since the matter is of an important nature and there is an earlier judgment of Division Bench before which these arguments were raised but have not been decided, we consider it appropriate to refer the matter to Full Bench.

Place the matter before Hon'ble Chief Justice for constitution of appropriate Bench."

We have heard learned Counsel for the parties.

The only question is whether the merit has to be taken into consideration while a selection is made for reserved posts for handicapped persons. There is a judgment of Justice P.A. Chowdary reported in M. Rajender Reddy v. Osmania University [1991(11) ALT 179]. The learned Counsel appearing for the State contended that this Court would not be able to legislate and he further submits that

there cannot be a classification within a classification. All disabled people under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short 'the Act') are one class and blindness has been defined under Section 2(b), which lays down;

"2 (b) "blineness" refers to a condition where a person suffers from any of the following conditions, namely :--

i. *total absence of sight; or*

ii. *visual acuity not exceeding 6/60 or 20/200 (snellen) in the better eye with correcting lenses; or*

iii. *limitation of the field of vision subtending an angle of 20 degree or worse."*

"Disability" has been defined under Section 2(i), which means;

"2 (i) "disability" means --

i. *blineness;*

ii. *low vision;*

iii. *leprosy-cured;*

iv. *hearing impairment;*

v. *locomotor disability;*

vi. *mental retardation;*

vii. *mental illness."*

Blindness, according to him, is a disability within the meaning of Section 2(i) of the Act and all those categories which have been mentioned under Section 2(b) fall within the category of blindness and they cannot be further classified. The learned Counsel for petitioners, on the other hand, submits that the purpose of enacting the Act was to achieve full participation and equality of people with disabilities. The Act was passed as a matter of fact, to give effect to the proclamation on the Full Participation and Equality of the People

with Disabilities in the Asian and Pacific Region. She submits that if a 100% blind is asked to compete with a 40% blind, obviously that could not be a fair competition and more disabled will be at more disadvantageous position than the less disabled, which is not the purpose of the Act.

The learned Counsel for the respondents has relied on many judgments, the latest being reported in *E.V.Chinnaiah v. State of A.P. and others*. It was a case relating to classification of Scheduled Castes into further groups of A, B, C and D, made by an Act of Andhra Pradesh. In para 33 of the judgment delivered by his Lordship Justice N.Santosh Hegde, it was noted that when there is already a classification of 59 castes having been put into a group for notifying them as Scheduled Castes, whether further classification amongst the class of Scheduled Castes for the very same object of providing reservation, was permissible. Then the Hon'ble Judge referred to a judgment reported in *State of J & K v. Triloki Nath Khosa* [(1974) 1 SCC 19] and various other earlier judgments and then in para 37, held,

> *"We have already held that the members of Scheduled Castes form a class by themselves and any further subclassification would be impermissible while applying the principle of reservation."*

In the light of this judgment which is a judgment of the Constitutional Bench of the Supreme Court, we do not intend to refer to other judgments. The writ petition has to fail on this ground. But we still believe that some mechanism will have to be adopted by the State in order to achieve the goal of seeing that as a result of reservation, the more disabled are at an advantageous position than those who are less disabled, but this Court is conscious that it cannot go beyond a point and legislate.

With these observations, the reference is answered.

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BILAL NAZKI, ACJ

10th June 2005. _____

L.NARASIMHA REDDY, J

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Dr. G.YETHIRAJULU, J

N.B.

L.R.Copies to be marked.

(B/o)

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SECTION OFFICER

One fair copy each to the Hon'ble Judges :

The Hon'ble Sri Justice Bilal Nazki, the Acting Chief Justice,

The Hon'ble Sri Justice L.Narasimha Reddy, and

The Hon'ble Dr.Justice G.Yethirajulu, for their Lordships' kind perusal.

To

1 The Secretary, Ministry of Law, justice and Company Affairs, Government of

India, New Delhi.

2 The Prl.Secretary to Government of A.P., Education Department.,Secretariat., Hyderabad.
3 The Commissioner and Director of School Education., Hyderabad.
4 The District Educational Officer., Cuddapah District.

5 Two C.Cs. to the Advocate General, High Court of A.P., Hyderabad (OUT)

6 CD copies

7 CC to SMT.SUMALINI REDDY

8 L.R. Copies.

9 The Under Secretary, Union of India, Ministry of Law, Justice and

Company Affairs, New Delhi.

10 The Secretary, A.P.Advocates Association Library, High Court Buildings,

Hyderabad.